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Serial No.04
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.1/2022

Date of Order: 07.02.2022

Sanjeeb Ch. Marak Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. KC Gautam, Adv
For the Respondent(s) : Mr. B Bhattacharjee, AAG with
Ms. ZE Nongkynrih, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (**per the Hon'ble, the Chief Justice) (Oral**)

The marginal delay of about 12 days in preferring the appeal is condoned. The appeal is taken on record.

2. The short grievance of the appellant, who has been dismissed from the Meghalaya police service by an order dated January 15, 2016, is that the precondition to dispensing with an inquiry in terms of Article 311(2)(b) of the Constitution was not complied with in the appellant being summarily dismissed from service without being afforded an opportunity to deal with the charges levelled against him.

3. Article 311(2) of the Constitution is a safety-net that is provided to every person who is a member of a civil service of the Union or of an all-India service or a civil service of a State or holds a civil post under the Union or a State. It is constitutionally mandated that such a person shall be dismissed or removed or reduced in rank only upon an inquiry in which he

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has been informed of the charges levelled against him and given a reasonable opportunity of being heard in respect thereof. The second proviso to the clause, inter alia, mandates that the clause, that is to say Article 311(2) of the Constitution, would not apply in certain situations:

> "**311**. **Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**. –
>
> (1) ....
>
> (2) ....
>
> Provided that ....
>
> Provided further that this clause shall not apply –
>
> (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
>
> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
>
> (3) ...."

4. The appellant asserts that the three situations covered by the relevant proviso are distinct and do not overlap. According to the appellant, a relevant person may be dismissed or removed from service or reduced in rank following his conviction on a criminal charge, which implies the conviction by a criminal court. The second ground under which the clause would be inapplicable would be when the authority empowered to dismiss the relevant person is satisfied for some reason that it is not reasonably practicable to hold the inquiry envisaged in the substantive provision of the clause. However, there is a caveat to the second condition: in that, the reason as to why it is not practicable to hold such inquiry should be recorded by the relevant authority in writing. Thus, according to the

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appellant, the mandatory inquiry may not be dispensed with unless the reasons therefor are recorded as to why it is not reasonably practicable to hold such inquiry. In the absence of reasons, the appellant maintains, the relevant order would have no legs to stand on.

5. For the completeness of the discussion, the third limb of the second proviso has also to be covered. Such third limb provides for the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State it is not expedient to hold such inquiry.

6. Though the third limb of the relevant proviso does not come into play in the present case, the appellant has laboured on such aspect to emphasise that if it is the security of the State that is in question, it is only for the highest office of the President or the Governor to be satisfied in such regard; no satisfaction on such count even expressly mentioned by the disciplinary authority would allow the inquiry to be dispensed with. In other words, the appellant seeks to compartmentalise the three situations and suggest that the entirety of the conditions in one situation must be complied with and it would not do for a disciplinary authority to dispense with the inquiry on the ground that the interest of the security of the State demands otherwise.

7. In the present case, a confidential report, departmentally rendered, found that the appellant had passed on information pertaining to police operations and movements to a banned and extremist outfit by the name of Garo National Liberation Army. At the time that such confidential report was obtained in or about 2015-16 there was a spurt in the violent and

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nefarious activities undertaken by the outfit and it appears that several police personnel lost their lives in the course of dealing with the outfit.

8. The order of dismissal of January 15, 2016 referred to the confidential report of the appellant herein having passed on information to the banned outfit. The order alluded to the casualties suffered by the police and opined that in the light of the material available against the appellant, it was incumbent that he be removed from service immediately without any formal inquiry. However, the relevant order did not expressly indicate why it was not reasonably practicable to hold an inquiry and give the appellant an opportunity to deal with the charges levelled against him before taking any punitive action. To such extent the appellant is justified in the assertion that the letter of Article 311(2)(b) of the Constitution may have not been followed.

9. An initial challenge was launched against the order of January 15, 2016 in proceedings under Article 226 of the Constitution, which culminated in an order passed on August 6, 2019 to the effect that since the appellant herein had preferred a statutory appeal from the order of dismissal, the appellant had to await the outcome thereof before approaching this Court in its extraordinary jurisdiction. A direction was issued for the expeditious disposal of the appeal which resulted in the appellate order being passed on October 23, 2019.

10. The appellate authority recorded that the papers had been examined and it was evident that the case was that the appellant had links with the banned outfit and had passed on information about police movements and operations to the outlawed organisation. The appellate

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authority found that "the act was very grave in nature considering the fact that he was a member of the police force." The appellate authority recorded that the conduct of the appellant had exposed police personnel to great risk and rendered several operations futile and such conduct was unbecoming of a member of a police force. The appellate authority expressed satisfaction that senior police officials had dealt with the matter in an appropriate manner and the obvious lack of loyalty on the part of the appellant called for his summary dismissal. Again, the letter of the Article 311(2)(b) of the Constitution may not have been complied with in the appellate authority finding any express reason for it not being reasonably practicable for an inquiry to be held against the appellant before punishing him.

11. In the judgment and order impugned dated December 17, 2021, the Court of the first instance recorded the submission of the parties and noticed the several authorities relied upon by the appellant herein in support of the contention that the reason had to be indicated before any inquiry could be dispensed with. The writ court also recorded that the records pertaining to the proceedings had been placed before the Court and the writ court took the trouble of going through the records.

12. Indeed, the writ court found that the appellant herein had admitted to having links with the banned organisation. In the light of such discovery from the records, the writ court held that it would have been futile to conduct any inquiry since the material in the confidential report regarding the appellant's links with the banned outfit stood corroborated by the appellant's admission which was evident from the records. The writ court also held that since the matter pertained to the security of the State, the

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decision to summarily remove the appellant from service did not warrant any interference.

13. Reasons are indispensable in any form of adjudication or assessment, whether judicial or quasi-judicial. Reasons are the links that indicate what impelled the adjudicating mind to arrive at the conclusion after the journey through the facts that were presented before the adjudicating authority. As to the quality of reasons, it has often been said that several volumes may be wasted without indicating any iota of reason; while a terse sentence covering two or three lines may provide adequate reasons. It is also possible to infer reasons from a relevant order when no express reasons may be found therein.

14. Here is a case where a confidential report was obtained indicating the links of the appellant herein with a banned outfit that the appellant's employer was engaged with to quell the disruptive activities initiated by such outfit. Senior police personnel went through the confidential report and found sufficient merit therein. Even if, for the present discussion, the admission of the appellant is not taken into consideration since that has not been expressly referred to in either the original order of January 15, 2016 or the appellate order of October 23, 2019, what is evident is that both the disciplinary authority and the appellate authority found the material against the writ petitioner to be unimpeachable, given that the nature of charge against the writ petitioner was that of betraying his employer and providing information to the banned outfit that the appellant's employer was engaged in fighting. It may be reasonably inferred from the departmental orders impugned that it was not reasonably practicable to hold any inquiry. There

is no doubt that the spirit of the Article 311(2)(b) has been complied with and the same is evident both from the order of punishment and the appellate order dealing with the same.

15. While it is true that as to whether the security of the State is at stake is a matter that the President or the Governor, as the case may be, must be satisfied with, the three limbs of the second proviso to Article 311(2) of the Constitution cannot be made into watertight compartments. This is particularly so since the appellant herein was a member of a police force and not in any other civil service. When a member of the police force was found betraying his own force and supplying information to an extremist outfit that the police organisation was trying to deal with, it was justifiable on the part of the disciplinary authority to consider it to be not reasonably practicable to afford the writ petitioner an opportunity of dealing with the charge against him in the course of any inquiry. Some latitude has to be given to the police authorities especially in a scenario where no case of malice in fact is made out.

16. Judicial notice must be taken of the fact that the police obtain confidential information from undisclosed sources and it may neither be prudent nor practicable to expose the identity of the sources or risk such sources to be cross-examined or their identities revealed. In such a scenario, particularly with senior police officials having no axe to grind against the appellant having found that the material against the appellant was clinching, the reason for dispensing with the inquiry is self-evident and writ large in the departmental orders impugned without being expressly recorded.

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17. Before parting with the matter, a word of caution may be inserted. It is elementary that when the law requires a certain thing to be done in a particular manner, it has to be done in such manner or not at all. The rule applies with more vigour in respect of any mandate as found in any provision of the suprema lex which is the Constitution. At the same time, no adjudication is made without reference to the context and the surrounding circumstances, be they geographical or situational or even time-specific or the like. It is also possible that the reason for dispensing with the inquiry is self-evident in the order impugned despite it not being expressly spelt out.

18. Though this is not to suggest that when reasons are required to be expressed, they may only be inferred; in certain situations, particularly in the context of the present case, when the reasons are obvious and apparent, the mandate of the provision may be seen to have been complied with.

19. For the reasons aforesaid, the judgment and order impugned dated December 17, 2021 do not call for interference. WA No.1 of 2022 is dismissed.

20. MC (WA) No.1 of 2022 is disposed of.

21. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
07.02.2022
"Lam DR-PS"